

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,  
Plaintiff,

v.

RAPOWER-3, LLC, INTERNATIONAL  
AUTOMATED SYSTEMS, INC., LTB1,  
LLC, R. GREGORY SHEPARD, NELDON  
JOHNSON, and ROGER FREEBORN,  
Defendants.

**SCHEDULING ORDER AND  
ORDER VACATING HEARING**

Case No. 2:15-cv-00828 DN

District Judge David Nuffer

---

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause pursuant to Fed. R. Civ. P. 6.

This Court ORDERS the Initial Pretrial Hearing set for April 20, 2016, at 10:00 a.m. VACATED.

**\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\***

- | <b>1.</b> | <b>PRELIMINARY MATTERS</b>                                     | <b>DATE</b>     |
|-----------|--|-----------------|
|           | Nature of claims and any affirmative defenses:                 |                 |
| a.        | Was Rule 26(f)(1) Conference held?                             | <u>03/10/16</u> |
| b.        | Have the parties submitted the Attorney Planning Meeting Form? | <u>03/25/16</u> |
| c.        | Deadline for 26(a)(1) initial disclosure?                      | <u>04/22/16</u> |
| <b>2.</b> | <b>DISCOVERY LIMITATIONS</b>                                   | <b>NUMBER</b>   |

---

<sup>1</sup> The Magistrate Judge completed Initial Pretrial Scheduling under [DUCivR 16-1\(b\)](#) and [DUCivR 72-2\(a\)\(5\)](#). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

- a. Maximum Number of Depositions by Plaintiff(s) 35 in addition to  
depositions of each party-  
defendant
- b. Maximum Number of Depositions by Defendants 35
- c. Maximum Number of Hours for Each Deposition 7  
(unless extended by agreement of parties)
- d. Maximum Interrogatories by any Party to any Party 35
- e. Maximum requests for admissions by any Party to any Party 50
- f. Maximum requests for production by any Party to any Party 50
- g. The Parties shall handle discovery of electronically stored information as follows:  
  
*The parties do not anticipate the United States producing ESI in native format. To the extent the United States produces any ESI, and at this time, the United States does not anticipate producing ESI, the documents produced will be in printed form via .pdf or .tiff images.*  
  
*The defendants will produce ESI in its native format, with metadata, or .pdf or .tiff images depending on what is available and feasible.*
- h. The parties shall handle a claim of privilege or protection as trial preparation material asserted after production as follows:  
  
*Any documents or records, either in electronic or printed form, that have been inadvertently produced by counsel during the pendency of this case and which a party has made a claim of privilege or protection as trial preparation material will not constitute a waiver of such privilege or protection and may not be produced as evidence without an order from the Court.*
- i. Last day to serve written discovery: 03/31/17
- j. Close of fact discovery: 06/02/17
- k. (optional) Final date for supplementation of disclosures and discovery under Rule 26 (e): 02/24/17

<b>3.</b>	<b>AMENDMENT OF PLEADINGS/ADDING PARTIES<sup>2</sup></b>	<b>DATE</b>
a.	Last Day to File Motion to Amend Pleadings	<u>11/04/16</u>
b.	Last Day to File Motion to Add Parties	<u>11/04/16</u>
<b>4.</b>	<b>RULE 26(a)(2) REPORTS FROM EXPERTS</b>	<b>DATE</b>
a.	Parties bearing burden of proof	<u>06/30/17</u>
b.	Counter reports	<u>08/18/17</u>
<b>5.</b>	<b>OTHER DEADLINES</b>	<b>DATE</b>
a.	Last day for Expert discovery	<u>10/06/17</u>
b.	Deadline for filing dispositive or potentially dispositive motions	<u>11/10/17</u>
c.	Deadline for filing partial or complete motions to exclude expert testimony	<u>11/10/17</u>
<b>6.</b>	<b>SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION</b>	<b>DATE</b>
a.	Referral to Court-Annexed Mediation:	<u>No</u>
b.	Referral to Court-Annexed Arbitration	<u>No</u>
c.	The parties will complete Private Mediation/Arbitration by:	<u>00/00/0000/</u>
d.	Evaluate case for Settlement/ADR on	<u>00/00</u>
e.	Settlement probability:	

---

<sup>2</sup> Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

7.	TRIAL AND PREPARATION FOR TRIAL	TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures <sup>3</sup>		
	Plaintiff		<u>02/09/18</u>
	Defendant		<u>02/23/18</u>
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)		<u>00/00/00</u>
c.	Special Attorney Conference <sup>4</sup> on or before		<u>03/09/18</u>
d.	Settlement Conference <sup>5</sup> on or before		<u>03/09/18</u>
e.	Final Pretrial Conference	2:30 p.m.	<u>04/02/18</u>
f.	Trial	<u>Length</u>	
	i. Bench Trial	<u># days</u>	<u>__:</u> ___.m. <u>00/00/00</u>
	ii. Jury Trial	<u>10 days</u>	8:30 a.m. <u>04/16/18</u>

The parties dispute whether defendants are entitled to a jury trial. However, the parties anticipate that the estimated length of trial is 7-10 trial days.

<sup>3</sup> The Parties must disclose and exchange any demonstrative exhibits or animations with the 26(a)(3) disclosures.

<sup>4</sup> The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. The parties should schedule witnesses to avoid gaps and disruptions. The parties should mark exhibits in a way that does not result in duplication of documents. The pre-trial order should include any special equipment or courtroom arrangement requirements.

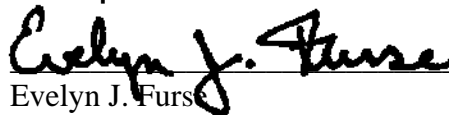
<sup>5</sup> The Settlement Conference does not involve the Court unless the Court enters a separate order. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

**8. OTHER MATTERS**

Parties should file all Motions in Limine well in advance of the Final Pre Trial.

Signed April 5, 2016.

BY THE COURT:

A handwritten signature in black ink, reading "Evelyn J. Furse". The signature is written in a cursive style with a horizontal line underneath the name.

Evelyn J. Furse  
U.S. Magistrate Judge